amendment.

The primary reference applied against the claims, Saito, teaches that only *Lactobacillus acidophilus* does not exhibit deconjugation of bile acids, and says nothing whatsoever about 7α-dehydroxylase activity. More importantly, where the Saito reference does mention a *Lactobacillus bulgaricus* and *Streptococcus thermophilus* they are distinguished from the bacteria of the reference invention. Thus, Saito teaches away from the present invention by identifying *Lactobacillus bulgaricus* and *Streptococcus thermophilus* as failing to have even one characteristic of the present invention: a bile acid deconjugation activity of less than 50%.

The Saito reference is actually two publications, EP 671,468 and U.S. 5,516,684. The disclosures in the two publications are essentially identical, both having emerged from the same priority document. Thus, the remarks below regarding Saito will concentrate on the U.S. patent. The comments also apply to the EP publication.

Saito relates particularly to the *Lactobacillus* genus and, at column 3, identifies several *acidophilus* species which presumably meet the reference requirement for deconjugation of bile acids. In every case where a specie is mentioned having this activity, *Lactobacillus acidophilus* is identified.

Importantly, *Lactobacillus bulgaricus* and *Streptococcus thermophilus* are mentioned at column 5, in the paragraph at lines 40-54. Here it is made clear that, as opposed to the *Lactobacillus* bacteria "according to the present invention," lactic acid bacteria "for dairy" such as *Lactobacillus bulgaricus* or *Streptococcus thermophilus* may be used in combination "whenever the occasion may demand" for preparing, e.g., a fermented milk. There is no doubt that the *Lactobacillus bulgaricus* and *Streptococcus thermophilus* species are described in Saito simply as supplements to those *Lactobacillus* species "according to the present

invention" used in preparing a milk product, and do not have the identified bile acid deconjugation activity required. This is made even more clear in the examples.

Specifically, in the Example described in the paragraph bridging columns 10 and 11 several starter compositions are described which use *Lactobacillus delbruckii bulgaricus* or *Streptococcus thermophilus*. However, the starter or "resulting mass" is inoculated with 3 weight percent of *Lactobacillus acidophilus* CL-0062, an acidophilus species according to the Saito invention at column 3, line 14 of the reference and having the necessary bile acid property.

As the rest of column 11 shows, the *bulgaricus* and *thermophilus* species clearly are used simply in preparing an initial milk product to which the *Lactobacillus acidophilus* species of the Saito invention are added. By identifying *Streptococcus thermophilus* and *Lactobacillus bulgaricus* in this way, they clearly are distinguished from the *acidophilus* species of the Saito invention which do not exhibit deconjugation of bile acids.

Thus, it is quite clear that Saito neither anticipates nor renders obvious the present invention as described in Claim 37. Because the *Streptococcus thermophilus* and *Lactobacillus bulgaricus* species identified in Saito are identified as falling outside the group of species which do not exhibit deconjugation of bile acids, and because the reference completely lacks any teaching with regard to 7α-dehydroxylase activity, there is no reason to believe that the species identified as distinct from the invention species in Saito would, each and every time (and on every occasion as required for inherent anticipation), meet the limitations of present Claim 37. For these same reasons, present Claim 37 is not obvious over this reference, particularly since 7α-dehydroxylase activity is not identified as a result-effective variable, nor is it suggested as important in combination with bile acid deconjugation activity. Because Salvioli relates to *Streptococcus faecium*, it is no longer

pertinent to present Claim 37.

Accordingly, and for the reasons presented above Applicants respectfully request the reconsideration and withdrawal of the rejection of Claim 37. Should the Examiner require further discussion of this issue he is requested to contact the undersigned. In addition, should the Examiner prefer, Applicant will submit a supplemental amendment placing dependent Claims 38-44 in independent format.

Respectfully submitted,

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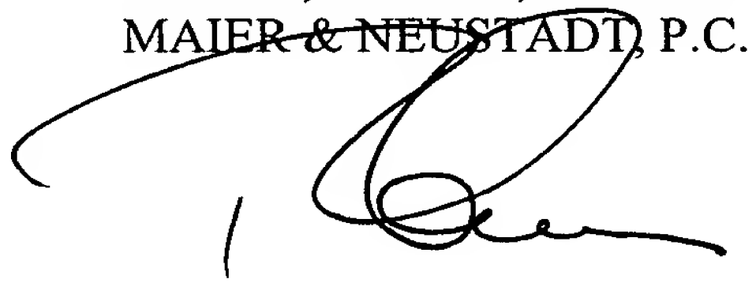

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